

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



November 16, 2018

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response to Hearing Requests and Requests for
Reconsideration Brief for Rio Grande LNG LLC, Permit No. 140792/ PSDTX 1498
TCEQ Docket No. 2018-1304-AIR

Dear Ms. Bohac:

Enclosed please find a copy of the Executive Director's Response to Hearing Requests and Requests for Reconsideration brief for the above referenced item. If you have any questions, please do not hesitate to call me at extension 4113.

Sincerely,

A handwritten signature in blue ink, appearing to read "Booker Harrison".

Booker Harrison
Attorney
Environmental Law Division

Enclosures

TCEQ AIR QUALITY PERMIT NUMBER 140792
TCEQ DOCKET NUMBER 2018-1304-AIR

APPLICATION BY	§	BEFORE THE
RIO GRANDE LNG LLC	§	
RIO GRAND LNG AND RIO BRAVO	§	TEXAS COMMISSION ON
PIPELINE FACILITY	§	
BROWNSVILLE, CAMERON COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND REQUESTS FOR RECONSIDERATION

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.056(n), requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code (TWC) § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the plant is included with this Response and has been provided to all requesters for this application. In addition, a current compliance history report, technical review summary, modeling audit, and draft permit prepared by the ED's staff have been filed as backup material for the commissioners' agenda. The ED's Response to Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

II. Description of Facility

Rio Grande LNG, LLC has applied to the TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA), § 382.0518. This will authorize the construction of a new facility that may emit air contaminants.

This permit will authorize the Applicant to construct a natural gas liquefaction facility and liquefied natural gas (LNG) export terminal (Terminal). In addition, a pipeline compressor station (Compressor Station 3), which is owned and operated by the Rio Bravo Pipeline Company, LLC, will be located within the fence line of the Terminal. The emissions from Compressor Station 3 will be aggregated with the Terminal emissions for the Prevention of Significant Deterioration (PSD) analysis. The Terminal will have six liquefaction trains with a combined export capacity of 1.2 trillion Standard Cubic

¹ Statutes cited in this response may be viewed online at www.statutes.legis.state.tx.us. Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules" link on the TCEQ website at www.tceq.texas.gov.

Feet (SCF) of natural gas per annum. The facility is located on State Highway 48 approximately 15.2 miles to the east-northeast of the intersection of State Highway 48 and State Highway 4. The facility's southern border is the Brownsville ship channel, Brownsville, Cameron County. Contaminants authorized under this permit include: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less (PM10) and 2.5 microns or less (PM2.5), greenhouse gases, hydrogen sulfide, hazardous air pollutants, sulfur dioxide, and sulfuric acid mist.

III. Procedural Background

The permit application was received on May 18, 2016, and declared administratively complete on June 3, 2016. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on June 22, 2016, in The Brownsville Herald and in Spanish on June 22, 2016, in El Nuevo Herald. A public meeting was held on March 8, 2018 in Brownsville. The notice of public meeting was published in English on February 22, 2018 in The Brownsville Herald and in Spanish on February 22, 2018 in El Nuevo Herald. The public comment period ended on March 26, 2018. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

The ED's RTC was filed with the Chief Clerk's Office on September 14, 2018, and mailed to all interested persons on September 26, 2018, including those who asked to be placed on the mailing list for this application and those who submitted a comment or requests for a contested case hearing. The cover letter attached to the RTC included information about making requests for a contested case hearing or for reconsideration of the ED's decision. The letter also explained that hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

IV. Applicable Law for Requests for Reconsideration

Any person may file a request for reconsideration of the Executive Director's decision. However, for the commission to consider the request, it must substantially comply with the following requirements set forth in 30 TAC § 55.201(e): give the name, address, day-time telephone number and, when possible, fax number of the person who files the request; expressly state that the person is requesting reconsideration of the Executive Director's decision; and give reasons why the decision should be reconsidered.

V. Response to Request for Reconsideration

John Young requested reconsideration of the ED's evaluation of greenhouse gas (GHG) emissions. Although Mr. Young did not specify which responses on which he is requesting reconsideration, because the reconsideration raises issues about PM_{2.5} and the quantification and monetization of GHGs, the ED is interpreting those statements as requesting reconsideration of Response 6 regarding health effects, and response 24

regarding the GHG permit. The ED provides the following response to the request for reconsideration.

REQUEST FOR RECONSIDERATION OF RESPONSE 6: Mr. Young states that there is no safe level for exposure to “= < 2.5 particulates” and that it results in pre-term births, low birth rates, high blood pressure in childhood, infant mortality, and childhood respiratory problems. Mr. Young states that there is a disconnect between applicable laws and regulations and human health.

TCEQ RESPONSE: The U.S. Environmental Protection Agency (EPA) created and periodically reviews the NAAQS. The NAAQS, as defined in 40 Code of Federal Regulations (CFR) § 50.2, include both primary and secondary standards. Primary standards are those the EPA Administrator determines are necessary, within an adequate margin of safety, to protect public health, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. Secondary NAAQS are those the Administrator determines are necessary to protect public welfare and the environment, including animals such as birds and livestock, crops, vegetation, visibility, and buildings, from any known or anticipated adverse effects associated with the presence of a contaminant in the ambient air.

PM_{2.5} is a criteria pollutant for which the EPA has established a NAAQS. Specifically, the EPA has established a 24-hour and an annual standard for PM_{2.5} to ensure that there is adequate protection for both short-term and long-term exposure to PM_{2.5}. As part of the review for this application, an air quality analysis was conducted to ensure emissions of PM_{2.5} from the proposed facility would not cause adverse health effects in members of the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions. For this specific application, to ensure that emissions of PM_{2.5} would not cause adverse health effects, the Applicant used the AERMOD modeling system to provide a reasonable worst-case representation of potential impacts from the proposed emissions on the area surrounding the facility. The air dispersion analysis compared the predicted maximum ground level concentrations (GLC_{max}) from the proposed emissions for PM_{2.5}, to its respective de minimis levels. Concentrations below the de minimis level are considered to be so low that they do not require further NAAQS analysis. The overall evaluation process provides a conservative prediction that is protective of the public. As discussed further in Response 6 of the RTC, the GLC_{max} for both the 24-hour and annual PM_{2.5} averaging times were below their respective de minimis levels. As a result, based on the potential predicted concentrations reviewed by the Executive Director's staff, adverse short- or long-term health effects for the general public, including sensitive subgroups such as children, the elderly, or those individuals with preexisting health conditions, animal life, crops, and vegetation are not expected as a result of exposure to emissions of PM_{2.5}.

REQUEST FOR RECONSIDERATION OF RESPONSE 24: Mr. Young states that it is possible to meaningfully evaluate point source GHGs citing to several documents, including internet links, in the docket for FERC's Certification of New Interstate Natural Gas Facilities (Docket No. PL 18-01-000) as providing guidance on quantifying the cost of GHG emissions. Mr. Young also states it is desirable and necessary to quantify, monetize, and eliminate GHG emissions. He cites to various sources,

including internet links, supporting his statements that area residents support the regulation of CO₂, global temperatures are rising, there are increasing levels of car and truck emissions, the need to reduce investment in fossil-fueled electric power, and associated risks.

TCEQ RESPONSE: As discussed in Response 24, the EPA Administrator has recognized that human-induced climate change has the potential to be far-reaching and multi-dimensional. See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 75 Fed. Reg. 66496, 66497 (Dec. 15, 2009). Climate change modeling and evaluations of risks and impacts are typically conducted for changes in emissions that are orders of magnitude larger than the emissions from individual projects that might be analyzed in permit reviews. As a result, quantifying the exact impacts attributable to a specific GHG source obtaining a permit in specific places and points would not be possible with current climate change modeling. EPA PSD and Title V Permitting Guidance for GHGs, March 2011 at 48. Thus, EPA has concluded it would not be meaningful to evaluate impacts of GHG emissions on a local community in the context of a single permit. As a result, TCEQ has determined that an air quality analysis for GHG emissions from a single source would provide no meaningful data and has not required the Applicant to perform one.

As part of the review of the application, the ED's staff ensured that GHG emission calculations were performed using acceptable EPA developed emission factors, sources expected to emit GHGs were listed on the MAERT and limited to approved emission rates, and BACT for GHGs were applied to applicable sources. Compliance with the approved emission rates for GHGs is shown through proposed Special Condition Nos. 25-28.

VI. The Evaluation Process for Hearing Requests

HB 801 established new statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Request

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;

- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

B. Hearing Request Requirements

In order for the commission to consider a hearing request, the commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. Pursuant to 30 TAC § 55.201(c), the request must be based only on the requestor's timely comments, and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

A hearing request must substantially comply with the following, as provided in 30 TAC § 55.201(d):

- 1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible fax number, who shall be responsible for receiving all official communications and documents for the group;
- 2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a matter not common to members of the general public;
- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised during the public comment period by the requestor and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and

- 5) provide any other information specified in the public notice of application.

C. Requirement that Requester be an Affected Person/"Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requester is an "affected" person. Section 55.203 sets out who may be considered an affected person:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Except as provided by §55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

With respect specifically to air quality permits, the activity the commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the commission. Commission rules also include a general prohibition against causing a nuisance. Further, for air quality permits, distance from

the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility.

For applications filed on or after September 1, 2018, 30 TAC § 55.201(d) allows the commission to also consider, to the extent consistent with case law:

- 1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
- 2) the analysis and opinions of the executive director; and
- 3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

D. Requests by a Group or Association.

A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- 1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- 2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- 3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case. 30 TAC § 55.205(a).

For applications filed on or after September 1, 2015, a request may not be granted unless all of the following requirements are met:

- 1) comments on the application are timely submitted by the group or association;
- 2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- 3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- 4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case. 30 TAC § 55.205(b).

E. Requests by Governmental Entities

In determining whether a governmental entity is an affected person, the governmental entity's statutory authority or interest in the issues relevant to the application shall also be considered. 30 TAC § 55.203(b)(7).

F. Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application. 30 TAC § 50.115(c).

VII. Analysis of the Hearing Requests

A. Governmental Entities

1. City of Port Isabel

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommend the Commission find that the City of Port Isabel is not an affected person.

The City of Port Isabel submitted a timely filed comment that included a hearing request. The hearing request was in writing, provided the required contact information, and included issues that are the basis of its hearing request. In its hearing request the City indicated that the proposed plant was located within or near its ETJ; however, the actual city limits are located more than 1.5 miles from the nearest property boundary of the proposed plant. Further, in its hearing request, the City identified that the nearest property owned by the City is over 4 miles from the property boundary of the proposed plant.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of the City to the relative location of the proposed plant, the health and safety of individual citizens would not be impacted in a manner different from the general public. Further, the City's hearing request regarding its ETJ is vague, and failed to demonstrate any statutory authority it has in its ETJ that are relevant to the Rio Grande LLC application and draft permit.

Therefore, given the distance of the City from the proposed plant, the ED recommends that the Commission find that the City is not an affected person based on the criteria in 30 TAC § 55.203.

In its hearing request, the City raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 6: Whether noise and light from the proposed plant will negatively impact surrounding areas and nearby residents.

Issue 8: Whether there was adequate opportunity for public participation on this permit application, including review of the application and draft permit.

Issue 30: Whether cumulative impacts of surrounding plants were appropriately accounted for in the Air Quality Analysis modeling for this application.

Issue 40: Whether Cameron and Hidalgo counties are in attainment for the NAAQS.

Issue 41: Whether the proposed location is suitable for an LNG plant.

Issue 42: Whether the proposed permit is protective of dust emissions from the plant.

Issue 43: Whether the proposed plant will negatively impact threatened and endangered species.

2. City of Laguna Vista

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommend the Commission find that the City of Laguna Vista is not an affected person.

The City of Laguna Vista submitted a timely filed comment that included a hearing request. The hearing request was in writing, provided the required contact information, and included issues that are the basis of its hearing request. The City is located approximately 5 miles from the nearest property boundary of the proposed plant. The City did not demonstrate that it either has statutory authority over or an interest in issues relevant to the Rio Grande LLC application and draft permit.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of the City to the relative location of the proposed plant, the health and safety of individual citizens would not be impacted in a manner different from the general public. Therefore, given the distance of the City from the proposed plant, the ED recommends that the Commission find that the City is not an affected person based on the criteria in 30 TAC § 55.203.

In its hearing request, the City raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 6: Whether noise and light from the proposed plant will negatively impact surrounding areas and nearby residents.

Issue 30: Whether cumulative impacts of surrounding plants were appropriately accounted for in the Air Quality Analysis modeling for this application.

Issue 40: Whether Cameron and Hidalgo counties are in attainment for the NAAQS.

Issue 41: Whether the proposed location is suitable for an LNG plant.

Issue 42: Whether the proposed permit is protective of dust emissions from the plant.

Issue 43: Whether the proposed plant will negatively impact threatened and endangered species.

B. Groups and Associations

1. Vecinos Para el Bienstar de la Comunidad Costera (VBCC)

- a. Whether the group or association submitted timely comments on the application

VBCC submitted timely comments on the Rio Grande LLC application. The ED has determined that VBCC meets this requirement for associational standing.

- b. Whether one or more members of the group or association would otherwise have standing to request a hearing in their own right.

According to the hearing request, Erika Avila has standing to participate in a contested case hearing for this permit. According to the hearing request, Ms. Avila resides approximately 5.5 miles from the location of the proposed plant.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of the Ms. Avila to the relative location of the proposed plant, her health and safety would not be impacted in a manner different from the general public. Therefore, while Ms. Avila's hearing request identified personal justiciable interests, given the distance of Ms. Avila from the proposed plant, the ED recommends that the Commission find that Ms. Avila is not an affected person based on the criteria in 30 TAC § 55.203.

The ED has determined that VBCC does not meet this requirement for associational standing.

- c. Whether the interests the group or association seeks to protect are germane to the organization's purpose.

According to the hearing request, the mission of VBCC is "to protect and improve the health, standard of living, and economic development of the coastal community in the Rio Grande Valley of South Texas." The ED has determined that VBCC meets this requirement for associational standing.

- d. Whether the claim asserted or the relief requested requires the participation of the individual members in the case.

The relief requested by VBCC does not require the participation of any individual member of VBCC. Therefore, the ED has determined that VBCC meets this requirement for associational standing.

Because VBCC does not meet all four of the criteria for associational standing, the ED recommends that the Commission find that VBCC is not an affected person.

In its hearing request, VBCC raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality

Issue 3: Whether the proposed plant will negatively impact property values

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 6: Whether noise and light from the proposed plant will negatively impact surrounding areas and nearby residents.

Issue 7: Whether the proposed permit adequately addresses environmental justice concerns.

Issue 8: Whether there was adequate opportunity for public participation on this permit application, including review of the application and draft permit.

Issue 9: Whether the permit application and supporting materials should have been provided in Spanish.

Issue 10: Whether "additional impacts" were adequately considered in the application.

Issue 11: Whether growth associated with the proposed plant was adequately addressed as part of the air quality analysis.

Issue 12: Whether contaminants in the ballast water of ships was considered in the application.

Issue 13: Whether the sulfur content of the incoming gas stream was appropriately represented in the application.

Issue 14: Whether emissions from flares at the proposed plant were appropriately estimated.

Issue 15: Whether the monitoring requirements for thermal oxidizers are adequate to ensure compliance with the terms of the proposed permit.

Issue 16: Whether the Best Available Control Technology (BACT) analysis in the permit application was adequate and complete.

Issue 17: Whether the controls proposed in the permit constitute BACT.

Issue 18: Whether estimations of emissions from vessel loading operations in the permit application were appropriate.

Issue 19: Whether fugitive emissions were appropriately represented and calculated in the permit application.

Issue 20: Whether the proposed permit contains adequate monitoring requirements for fugitive sources.

Issue 21: Whether the proposed permit contains adequate monitoring to ensure compliance with Special Conditions 8, 10, 13, 18, 21, 22.

Issue 22: Whether the proposed permit should include more specific testing requirements of emergency equipment.

Issue 23: Whether MSS operations at the proposed plant should be coordinated with other major sources in the area.

Issue 24: Whether the draft permit contains adequate monitoring to ensure compliance with emission limits for flares.

Issue 25: Whether limits for Maintenance Startup and Shutdown (MSS) are sufficiently defined in the draft permit.

Issue 26: Whether estimates of sulfur emissions in the permit application were appropriate.

Issue 27: Whether the analysis of controls for greenhouse gas emissions contained in the permit application was appropriate.

Issue 28: Whether the background monitoring concentrations used in the air quality analysis modeling for this application was appropriate.

Issue 29: Whether ambient air quality is adequately monitored in the Brownsville area.

2. Shrimpers and Fishermen of the RGV (SFRGV)

- a. Whether the group or association submitted timely comments on the application.

SFRGV submitted timely comments on the Rio Grande LLC application. The ED has determined that SFRGV meets this requirement for associational standing.

- b. Whether one or more members of the group or association would otherwise have standing to request a hearing in their own right.

According to the hearing request, Lela Burnell has standing to request a hearing in her own right. According to the hearing request, Ms. Burnell resides "within 18 miles of" the location of the proposed plant.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of Ms. Burnell from the relative location of the proposed plant, her health and safety would not be impacted in a manner different from the general public. Therefore, while Ms. Burnell's hearing request identified personal justiciable interests, given the distance of Ms. Burnell from the proposed plant, the ED recommends that the Commission find that Ms. Burnell is not an affected person based on the criteria in 30 TAC § 55.203.

The ED has determined that SFRGV does not meet this requirement for associational standing.

- c. Whether the interests the group or association seeks to protect are germane to the organization's purpose.

According to the hearing request, the mission of SFRGV is to represent individuals that depend on the area of the Brownsville Ship Channel for their livelihoods, to serve as stewards of the area, to communicate and express concern when their waters and land are in danger, and to keep the area healthy and thriving. The ED has determined that SFRGV meets this requirement for associational standing.

- d. Whether the claim asserted or the relief requested requires the participation of the individual members in the case.

The relief requested by SFRGV does not require the participation of any individual member of SFRGV. Therefore, the ED has determined that SFRGV meets this requirement for associational standing.

Because SFRGV does not meet all four of the criteria for associational standing, the ED recommends that the Commission find that SFRGV is not an affected person.

In its hearing request, SFRGV raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 3: Whether the proposed plant will negatively impact property values.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 6: Whether noise and light from the proposed plant will negatively impact surrounding areas and nearby residents.

Issue 7: Whether the proposed permit adequately addresses environmental justice concerns.

Issue 8: Whether there was adequate opportunity for public participation on this permit application, including review of the application and draft permit.

Issue 9: Whether the permit application and supporting materials should have been provided in Spanish.

Issue 10: Whether “additional impacts” were adequately considered in the application.

Issue 11: Whether growth associated with the proposed plant was adequately addressed as part of the air quality analysis.

Issue 12: Whether contaminants in the ballast water of ships was considered in the application.

Issue 13: Whether the sulfur content of the incoming gas stream was appropriately represented in the application.

Issue 14: Whether emissions from flares at the proposed plant were appropriately estimated.

Issue 15: Whether the monitoring requirements for thermal oxidizers are adequate to ensure compliance with the terms of the proposed permit.

Issue 16: Whether the Best Available Control Technology (BACT) analysis in the permit application was adequate and complete.

Issue 17: Whether the controls proposed in the permit constitute BACT.

Issue 18: Whether estimations of emissions from vessel loading operations in the permit application were appropriate.

Issue 19: Whether fugitive emissions were appropriately represented and calculated in the permit application.

Issue 20: Whether the proposed permit contains adequate monitoring requirements for fugitive sources.

Issue 21: Whether the proposed permit contains adequate monitoring to ensure compliance with Special Conditions 8, 10, 13, 18, 21, 22.

Issue 22: Whether the proposed permit should include more specific testing requirements of emergency equipment.

Issue 23: Whether MSS operations at the proposed plant should be coordinated with other major sources in the area.

Issue 24: Whether the draft permit contains adequate monitoring to ensure compliance with emission limits for flares.

Issue 25: Whether limits for Maintenance Startup and Shutdown (MSS) are sufficiently defined in the draft permit.

Issue 26: Whether estimates of sulfur emissions in the permit application were appropriate.

Issue 27: Whether the analysis of controls for greenhouse gas emissions contained in the permit application was appropriate.

Issue 28: Whether the background monitoring concentrations used in the air quality analysis modeling for this application was appropriate.

Issue 29: Whether ambient air quality is adequately monitored in the Brownsville area.

3. Save RGV from LNG

- a. Whether the group or association submitted timely comments on the application.

Save RGV From LNG submitted timely comments on the Rio Grande LLC application. The ED has determined that Save RGV From LNG meets this requirement for associational standing.

- b. Whether one or more members of the group or association would otherwise have standing to request a hearing in their own right.

According to the hearing request, Ed McBride, Flora Gunderson, Marianne Poythress, Edna Goette, and Carolyn H. Ball are affected persons.

According to the hearing request, Mr. McBride's residence is approximately 2.6 miles from the eastern edge of the proposed facility; Ms. Gunderson's residence is approximately 2.3 miles from the eastern edge of the proposed facility; Ms. Poythress' residence is approximately 4.6 miles from the northeastern edge of the proposed facility; Ms. Goette's residence is approximately 3.3 miles from the proposed facility; and Ms. Ball's residence is approximately 5.9 miles from the proposed facility.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of the individuals identified above from the relative location of the proposed plant, their health and safety would not be impacted in a manner different from the general public. Therefore, while the hearing request identified personal justiciable interests, given the distance of the individuals from the proposed plant, the ED recommends that the Commission find that those individuals named in the hearing request are not affected persons based on the criteria in 30 TAC § 55.203.

The ED has determined that Save RGV From LNG does not meet this requirement for associational standing.

- c. Whether the interests the group or association seeks to protect are germane to the organization's purpose.

According to the hearing request, the mission of Save RGV From LNG is to represent individuals that depend on the area of the Brownsville Ship Channel for their livelihoods, to serve as stewards of the area, to communicate and express concern when their waters and land are in danger, and to keep the area healthy and thriving. The ED has determined that Save RGV From LNG meets this requirement for associational standing.

- d. Whether the claim asserted or the relief requested requires the participation of the individual members in the case.

The relief requested by Save RGV From LNG does not require the participation of any individual member of Save RGV From LNG. Therefore, the ED has determined that Save RGV From LNG meets this requirement for associational standing.

Because Save RGV From LNG does not meet all four of the criteria for associational standing, the ED recommends that the Commission find that Save RGV From LNG is not an affected person.

In its hearing request, Save RGV From LNG raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 16: Whether the Best Available Control Technology (BACT) analysis in the permit application was adequate and complete.

Issue 17: Whether the controls proposed in the permit constitute BACT.

Issue 27: Whether the analysis of controls for greenhouse gas emissions contained in the permit application was appropriate.

Issue 28: Whether the background monitoring concentrations used in the air quality analysis modeling for this application was appropriate.

Issue 30: Whether cumulative impacts of surrounding plants were appropriately accounted for in the Air Quality Analysis modeling for this application.

Issue 31: Whether the permit application should have been processed in an expedited manner.

Issue 32: Whether the controls included in the proposed permit for greenhouse gases constitute BACT.

Issue 33: Whether peak emissions from the proposed plant were adequately represented in the Air Quality Analysis.

Issue 34: Whether the emission calculations contained in the permit application accurately reflect peak emissions from the plant.

Issue 35: Whether the commission should require the Applicant to install a monitoring station at or near the proposed plant in order to meet the preconstruction monitoring requirements.

Issue 36: Whether the permit application contains an adequate visibility impairment analysis.

Issue 37: Whether there are inconsistencies between the proposed allowable emission rates found in the Preliminary Determination Summary and the proposed allowable emission rates in the permit application.

Issue 38: Whether emission events at currently permitted LNG facilities were considered as part of the review of the permit application.

Issue 39: Whether the proposed plant will have an emergency safety plan.

C. Individual Requesters

1. Marianne Poythress²

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommends the Commission find that Marianne Poythress is not an affected person.

Marianne Poythress submitted a timely filed comment that included a hearing request. This hearing request was submitted separately from the hearing request submitted on her behalf by Save RGV from LNG. The hearing request was in writing, provided the required contact information, and included issues that are the basis of its hearing request. Ms. Poythress' residence is located approximately 4.6 miles from the northeastern edge of the proposed plant. Ms. Poythress stated that the proposed plant will negatively affect air quality, her health, and school children and young people in the area.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of Ms. Poythress to the

² Ms. Poythress filed an individual public comment that included a request for a hearing on July 15, 2016 during first notice. Ms. Poythress also offered formal comment of similar substance on her own behalf at the public meeting on March 8, 2018. Finally, Ms. Poythress was included in the public comments and hearing requests submitted by Save RGV from LNG on March 26, 2018 and October 25, 2018 as an individual member of that organization.

relative location of the proposed plant, her health and safety would not be impacted in a manner different from the general public. Therefore, while Ms. Poythress' hearing request identified personal justiciable interests, given the distance of Ms. Poythress from the proposed plant, the ED recommends that the Commission find that Ms. Poythress is not an affected person based on the criteria in 30 TAC § 55.203.

In her hearing request, Ms. Poythress raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 41: Whether the proposed location is suitable for an LNG plant.

2. Joyce Marie Hamilton

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommends the Commission find that Joyce Marie Hamilton is not an affected person.

Joyce Marie Hamilton submitted a timely filed comment that included a hearing request. The hearing request was in writing, provided the required contact information, and included issues that are the basis of its hearing request. Ms. Hamilton resides in Harlingen, Texas, which is approximately 30 miles from the proposed plant. Ms. Hamilton stated that the proposed plant will negatively affect air quality and her health and welfare.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of Ms. Hamilton to the relative location of the proposed plant, her health and safety would not be impacted in a manner different from the general public. Therefore, while Ms. Hamilton's hearing request identified personal justiciable interests, given the distance of Ms. Hamilton from the proposed plant, the ED recommends that the Commission find that Ms. Hamilton is not an affected person based on the criteria in 30 TAC § 55.203.

In her hearing request, Ms. Hamilton raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 43: Whether the proposed plant will negatively impact threatened and endangered species.

3. Rosemary Breedlove

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommends the Commission find that Rosemary Breedlove is not an affected person.

Rosemary Breedlove submitted a timely filed comment that included a hearing request. The hearing request was in writing, provided the required contact information, and included issues that are the basis of its hearing request. Ms. Breedlove's residence is located in Denton, Texas. Ms. Breedlove stated that the proposed plant will negatively affect air quality and her health.

For air authorizations, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes and, given the distance of Ms. Breedlove to the relative location of the proposed plant, her health and safety would not be impacted in a manner different from the general public. Therefore, while Ms. Breedlove's hearing request identified personal justiciable interests, given the distance of Ms. Breedlove from the proposed plant, the ED recommends that the Commission find that Ms. Breedlove is not an affected person based on the criteria in 30 TAC § 55.203.

In her hearing request, Ms. Breedlove raised the following issues:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

Issue 2: Whether the proposed permit will negatively impact air quality.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

Issue 41: Whether the proposed location is suitable for an LNG plant.

D. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.³ The issues raised for this application and the Executive Director's analysis and recommendations follow.

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, Save RGV from LNG, Marianne Poythress, Rosemary Breedlove, Joyce Marie Hamilton, the City of Port Isabel, and the City of Laguna Vista. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 2: Whether the proposed permit will negatively impact air quality.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, Save RGV from LNG, Marianne Poythress, Rosemary Breedlove, Joyce Marie Hamilton, the City of Port Isabel, and the City of Laguna Vista. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 3: Whether the proposed plant will negatively impact property values.

This issue involves a disputed question of fact, was not withdrawn, however it is not relevant to issuance of the permit. Any effect the proposed plan may have on property values is not within the jurisdiction of the commission under the TCAA. Therefore, the ED recommends not referring this issue to SOAH.

Issue 4: Whether the proposed plant will negatively impact the local economy, specifically businesses that rely on tourism.

This issue involves a disputed question of fact, was not withdrawn, however it is not relevant to issuance of the permit. Any effect the proposed plant may have on businesses that rely on tourism is not within the jurisdiction of the commission under the TCAA. Therefore, the ED recommends not referring this issue to SOAH.

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, Save RGV

³ Tex. Gov't Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

from LNG, Marianne Poythress, Rosemary Breedlove, Joyce Marie Hamilton, the City of Port Isabel, and the City of Laguna Vista. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 6: Whether noise and light from the proposed plant will negatively impact surrounding areas and nearby residents.

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant to issuance of the permit. Any effect the proposed plant may have on noise and light is not within the jurisdiction of the commission under the TCAA. Therefore, the ED recommends not referring this issue to SOAH.

Issue 7: Whether the proposed permit adequately addresses environmental justice concerns.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 8: Whether there was adequate opportunity for public participation on this permit application, including review of the application and draft permit.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, and the City of Port Isabel. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 9: Whether the permit application and supporting materials should have been provided in Spanish.

This issue involves a disputed question of law and was not withdrawn; however, it is not relevant to issuance of the permit. 30 TAC § 39.405(g) only requires that a copy of the application be available for review and copying at a public place in the county in which the facility is proposed to be located. Therefore, the ED recommends not referring this issue to SOAH.

Issue 10: Whether "additional impacts" were adequately considered in the application.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 11: Whether growth associated with the proposed plant was adequately addressed as part of the air quality analysis.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the

event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 12: Whether contaminants in the ballast water of ships was considered in the application.

This issue involves a disputed question of fact and was not withdrawn; however, it is not relevant to issuance of the permit. The presence of contaminants in the ballast water of ships is not within the jurisdiction of the commission under the TCAA. Therefore, the ED recommends not referring this issue to SOAH.

Issue 13: Whether the sulfur content of the incoming gas stream was appropriately represented in the application.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 14: Whether emissions from flares at the proposed plant were appropriately estimated.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 15: Whether the monitoring requirements for thermal oxidizers are adequate to ensure compliance with the terms of the proposed permit.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 16: Whether the Best Available Control Technology (BACT) analysis in the permit application was adequate and complete.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, and Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 17: Whether the controls proposed in the permit constitute BACT.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, and Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 18: Whether estimations of emissions from vessel loading operations in the permit application were appropriate.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 19: Whether fugitive emissions were appropriately represented and calculated in the permit application.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 20: Whether the proposed permit contains adequate monitoring requirements for fugitive sources.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 21: Whether the proposed permit contains adequate monitoring to ensure compliance with Special Conditions 8, 10, 13, 18, 21, 22.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 22: Whether the proposed permit should include more specific testing requirements of emergency equipment.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 23: Whether MSS operations at the proposed plant should be coordinated with other major sources in the area.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 24: Whether the draft permit contains adequate monitoring to ensure compliance with emission limits for flares.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 25: Whether limits for Maintenance Startup and Shutdown (MSS) are sufficiently defined in the draft permit.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 26: Whether estimates of sulfur emissions in the permit application were appropriate.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 27: Whether the analysis of controls for greenhouse gas emissions contained in the permit application was appropriate.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, and Save RGV from LNG. However, THSC § 382.05102(d) provides that the authorization of greenhouse gas emissions under the commission's permitting authority "[is] not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code." Therefore, this issue is not referable to SOAH.

Issue 28: Whether the background monitoring concentrations used in the air quality analysis modeling for this application was appropriate.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, and Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 29: Whether ambient air quality is adequately monitored in the Brownsville area.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC and SFRGV. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 30: Whether cumulative impacts of surrounding plants were appropriately accounted for in the Air Quality Analysis modeling for this application.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG, the City of Port Isabel, and the City of Laguna Vista. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 31: Whether the permit application should have been processed in an expedited manner.

This issue involves an undisputed question of fact. Senate Bill 1756, 83rd Legislature, 2013, amended the TCAA to provide TCEQ with the authority to accept a surcharge from applicants to cover expenses incurred by expediting the processing of an application. However, expedited applications undergo the same level of scrutiny and review as non-expedited applications. The ED recommends not referring this issue to SOAH.

Issue 32: Whether the controls included in the proposed permit for greenhouse gases constitute BACT.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by VBCC, SFRGV, and Save RGV from LNG. However, THSC § 382.05102(d) provides that the authorization of greenhouse gas emissions under the commission's permitting authority "[is] not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code." Therefore, this issue is not referable to SOAH.

Issue 33: Whether peak emissions from the proposed plant were adequately represented in the Air Quality Analysis.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 34: Whether the emission calculations contained in the permit application accurately reflect peak emissions from the plant.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 35: Whether the commission should require the Applicant to install a monitoring station at or near the proposed plant to meet the preconstruction monitoring requirements.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG. In the

event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 36: Whether the permit application contains an adequate visibility impairment analysis.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 37: Whether there are inconsistencies between the proposed allowable emission rates found in the Preliminary Determination Summary and the proposed allowable emission rates in the permit application.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 38: Whether emission events at currently permitted LNG facilities were considered as part of the review of the permit application.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by Save RGV from LNG. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 39: Whether the proposed plant will have an emergency safety plan.

This issue involves a disputed question of fact, was not withdrawn, however it is not relevant to issuance of the permit. Whether the plant will have an emergency safety plan is not within the jurisdiction of the commission under the TCAA. Therefore, the ED recommends not referring this issue to SOAH.

Issue 40: Whether Cameron and Hidalgo counties are in attainment for the NAAQS.

This issue involves an undisputed question of fact. The EPA has designated Cameron and Hidalgo counties as being in attainment with all applicable NAAQS. Therefore, the ED recommends not referring this issue to SOAH.

Issue 41: Whether the proposed location is suitable for an LNG plant.

This issue involves a disputed question of fact, was not withdrawn, however it is not relevant to issuance of the permit. Plant location and surrounding land use are not within the jurisdiction of the commission under the TCAA. Therefore, the ED recommends not referring this issue to SOAH.

Issue 42: Whether the proposed permit is protective of dust emissions from the plant.

This issue involves a disputed question of fact, was not withdrawn, and is relevant and material to issuance of the permit. This issue was raised by the City of Port Isabel and the City of Laguna Vista. In the event the Commission finds one or more of these hearing requesters is an affected person, the ED recommends referring this issue to SOAH.

Issue 43: Whether the proposed plant will negatively impact threatened and endangered species.

This issue involves a disputed question of fact, was not withdrawn, however it is not relevant and material to issuance of the permit. The TCEQ does not have jurisdiction over endangered species. Therefore, the ED recommends not referring this issue to SOAH.

VIII. CONTESTED CASE HEARING DURATION

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be six months from the preliminary hearing to the issuance of a proposal for decision by the administrative law judge.

IX. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that the City of Port Isabel, the City of Laguna Vista, Vecinos Para el Bienstar de la Comunidad Costera, Shrimpers and Fishermen of the RGV, Save RGV from LNG, Marianne Poythress, Joyce Marie Hamilton, and Rosemary Breedlove are not affected persons and deny their hearing requests.
2. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.
3. If the Commission finds that any of the hearing requesters are affected persons, refer the following issues to SOAH:

Issue 1: Whether the proposed permit will be protective of human health and safety, including sensitive subgroups, and physical property. (VBCC, SFRGV, Save RGV from LNG, Marianne Poythress, Rosemary Breedlove, Joyce Marie Hamilton, the City of Port Isabel, and the City of Laguna Vista)

Issue 2: Whether the proposed permit will negatively impact air quality. (VBCC, SFRGV, Save RGV from LNG, Marianne Poythress, Rosemary Breedlove, Joyce Marie Hamilton, the City of Port Isabel, and the City of Laguna Vista)

Issue 5: Whether the proposed permit will be protective of welfare, including plants, marine life, animals, and the environment. (VBCC, SFRGV, Save RGV from

LNG Marianne Poythress, Rosemary Breedlove, Joyce Marie Hamilton, the City of Port Isabel, and the City of Laguna Vista)

Issue 7: Whether the proposed permit adequately addresses environmental justice concerns. (VBCC, SFRGV)

Issue 8: Whether there was adequate opportunity for public participation on this permit application, including review of the application and draft permit. (VBCC, SFRGV, and the City of Port Isabel)

Issue 10: Whether "additional impacts" were adequately considered in the application. (VBCC and SFRGV)

Issue 11: Whether growth associated with the proposed plant was adequately addressed as part of the air quality analysis. (VBCC and SFRGV)

Issue 13: Whether the sulfur content of the incoming gas stream was appropriately represented in the application. (VBCC and SFRGV)

Issue 14: Whether emissions from flares at the proposed plant were appropriately estimated. (VBCC and SFRGV)

Issue 15: Whether the monitoring requirements for thermal oxidizers are adequate to ensure compliance with the terms of the proposed permit. (VBCC and SFRGV)

Issue 16: Whether the Best Available Control Technology (BACT) analysis in the permit application was adequate and complete. (VBCC, SFRGV, and Save RGV from LNG)

Issue 17: Whether the controls proposed in the permit constitute BACT. (VBCC, SFRGV, and Save RGV from LNG.)

Issue 18: Whether estimations of emissions from vessel loading operations in the permit application were appropriate. (VBCC and SFRGV)

Issue 19: Whether fugitive emissions were appropriately represented and calculated in the permit application. (VBCC and SFRGV)

Issue 20: Whether the proposed permit contains adequate monitoring requirements for fugitive sources. (VBCC and SFRGV)

Issue 21: Whether the proposed permit contains adequate monitoring to ensure compliance with Special Conditions 8, 10, 13, 18, 21, 22. (VBCC and SFRGV)

Issue 22: Whether the proposed permit should include more specific testing requirements of emergency equipment. (VBCC and SFRGV)

Issue 23: Whether MSS operations at the proposed plant should be coordinated with other major sources in the area. (VBCC and SFRGV)

Issue 24: Whether the draft permit contains adequate monitoring to ensure compliance with emission limits for flares. (VBCC and SFRGV)

Issue 25: Whether limits for Maintenance Startup and Shutdown (MSS) are sufficiently defined in the draft permit. (VBCC and SFRGV)

Issue 26: Whether estimates of sulfur emissions in the permit application were appropriate. (VBCC and SFRGV)

Issue 28: Whether the background monitoring concentrations used in the air quality analysis modeling for this application was appropriate. (VBCC, SFRGV, and Save RGV from LNG)

Issue 29: Whether ambient air quality is adequately monitored in the Brownsville area. (VBCC and SFRGV)

Issue 30: Whether cumulative impacts of surrounding plants were appropriately accounted for in the Air Quality Analysis modeling for this application. (Save RGV from LNG, the City of Port Isabel, and the City of Laguna Vista)

Issue 33: Whether peak emissions from the proposed plant were adequately represented in the Air Quality Analysis. (Save RGV from LNG)

Issue 34: Whether the emission calculations contained in the permit application accurately reflect peak emissions from the plant. (Save RGV from LNG)

Issue 35: Whether the commission should require the Applicant to install a monitoring station at or near the proposed plant to meet the preconstruction monitoring requirements. (Save RGV from LNG)

Issue 36: Whether the permit application contains an adequate visibility impairment analysis. (Save RGV from LNG)

Issue 37: Whether there are inconsistencies between the proposed allowable emission rates found in the Preliminary Determination Summary and the proposed allowable emission rates in the permit application. (Save RGV from LNG)

Issue 38: Whether emission events at currently permitted LNG facilities were considered as part of the review of the permit application. (Save RGV from LNG)

Issue 42: Whether the proposed permit is protective of dust emissions from the plant. (City of Port Isabel and City of Laguna Vista)

4. Deny the request for reconsideration filed by John Young.


Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Margaret Ligarde, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division



Booker Harrison, Staff Attorney
Environmental Law Division
State Bar Number 00793910
PO Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-4113

Nicolas Parke, Staff Attorney
Environmental Law Division
State Bar Number 24088184
PO Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-1320

Katie Moore, Staff Attorney
Environmental Law Division
State Bar Number 24098133
PO Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0689

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on November 16, 2018, the original and seven copies of the Executive Director's Response to Hearing Request for Air Quality Permit 140792 for Rio Grande LNG LLC, was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all requestors via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Booker Harrison

Rio Grande LNG, LLC

Permit No. 140792/PSDTX1498

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 8/22/2018



0 0.9 1.8
Miles

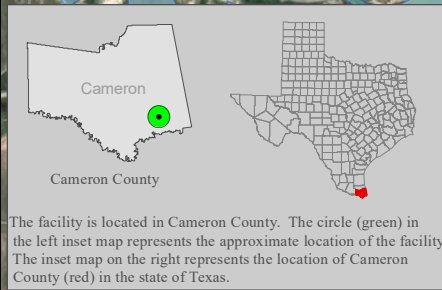
- Facility Property Boundary
- 1 mi Radius
- Requester
- Waterbodies

Please see Map Appendix A for
complete list of Requesters.

Source: The location of the facility was provided
by the TCEQ Office of Legal Services (OLS).
OLS obtained the site location information from the
applicant and the requestor information from the
requestor.

This map was generated by the Information Resources
Division of the Texas Commission on Environmental
Quality. This product is for informational purposes and
may not have been prepared for or be suitable for legal,
engineering, or surveying purposes. It does not represent
an on-the-ground survey and represents only the
approximate relative location of property boundaries.
For more information concerning this map, contact the
Information Resource Division at (512) 239-0800.

Chris Schrader CRF 533358



The facility is located in Cameron County. The circle (green) in
the left inset map represents the approximate location of the facility.
The inset map on the right represents the location of Cameron
County (red) in the state of Texas.

MAP APPENDIX A

ID	NAME
1	Joyce Marie Hamilton
2	Marianne Poythress
3	Rosemary Breedlove
4	Ed McBride
5	Flora Gunderson
6	Edna Goette
7	Carolyn Ball
8	Erika Avila
9	Lela Burnell